IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 160 of 2007
WITH
COMPANY PETITION No. 161 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2.	To be referred to the Reporter or not ?	**NO**
3.	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5.	Whether it is to be circulated to the civil judge ?	**NO**

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PARI PLAST INDUSTRIES PRIVATE LIMITED - Petitioner
Versus
. - Respondent

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Appearance :
MR PRANAV G DESAI for Petitioners.
MR HARIN P RAVAL for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/12/2007
COMMON ORAL JUDGMENT

1. PARI PLAST INDUSTRIES PRIVATE LIMITED, the Transferor Company and RAJIV PETROCHEMICALS PRIVATE LIMITED, the Transferee Company have filed these petitions seeking sanction of the Scheme of Amalgamation of the Transferor Company with the Transferee Company. It is stated that the Transferor Company has been engaged in manufacturing of PP/HDPE Bags since 1985. Presently, it is carrying on the business of PP/HDPE Bags. It is a loss making Company. The Transferee Company is also a Private Limited Company and engaged mainly in the trading of PVC Resin, LDPE Lotrene, Masterbatches, Polyester film and ASPET Goods manufactured by various other concerns. It is a profit making Company for the year ended 31.03.2006.

2. PARI PLAST INDUSTRIES PRIVATE LIMITED, the Transferor Company filed Company Application No. 277 of 2007 seeking dispensation of the meeting of the Equity Shareholders and Secured and Unsecured Creditors as they have given their consent to the Scheme of Amalgamation and to that effect, copies of the Resolutions and the consent terms of the Secured & Unsecured Creditors were produced in the record of the said application. This Court vide order dated 04.07.2007 passed in Company Application No. 277 of 2007 directed dispensation of meeting of the shareholders and Secured as well as Unsecured Creditors.

3. RAJIV PETROCHEMICALS PRIVATE LIMITED, the Transferee Company filed Company Application No.278 of 2007 seeking dispensation of the meeting of the Equity Shareholders and of Secured and Unsecured Creditors as they have given their consent to the Scheme of Amalgamation and to that effect, statement was made in paragraph 11 of the said application and the copies of the Resolutions and the consent letters of the Secured and Unsecured Creditors were produced on the record of the said application. This Court vide order dated 04.07.2007 made in Company Application No.278 of 2007 directed dispensation of meeting of Equity Shareholders as well as Secured and Unsecured Creditors.

4. Subsequently, both the Transferor as well as Transferee Company have filed the present petitions for sanction of the Scheme of Amalgamation. Both the petitions came to be admitted by an order dated 18.07.2007. Notice of the petition was directed to be issued to the Central Government through Regional Director, Corporate Affairs, Mumbai in both the petitions. The Court directed publication of advertisement in **Indian Express –** English daily and **Sandesh –** Gujarati Daily - both Ahmedabad editions. Publication in the Government Gazette was dispensed with. In case of Transferor Company, this Court directed issuance of notice to the Official Liquidator as well as with a direction to submit report.

5. Pursuant to the said order, the notice of admission of petitions came to be published in two daily Newspapers, namely, **Indian Express** and **Sandesh** on 30.07.2007. An affidavit of publication with necessary newspaper cuttings are filed on 10.08.2007.

6. Pursuant to the order dated 18.07.2007, the Central Government has through Shri R. K. Dalmia, Deputy Registrar of Companies filed an affidavit dated 16.10.2007. It is stated therein that on examination of the petitions, it has been found that the Transferee Company may be restricted not to utilize / club the autorized share capital of the Transferor Company and if required, the Transferee Company may be directed to increase the authorized share capital subject to compliance of the provisions of Section 94 / 97 read with Schedule 10 of the Companies Act, 1956. It is also stated in the affidavit that the petitioner companies may be directed to furnish latest financial position before this Court at the time of hearing of these petitions.

7. In this connection, an affidavit dated 17.12.2007 is filed by Shri Jitendra R. Patel, Director of the PARI PLAST INDUSTRIES PRIVATE LIMITED, the Transferor Company wherein it is stated that as the authorized share capital of both the Transferee Company and the Transferor Company are equal, the question of clubbing does not arise. Hence, there will be no loss of revenue on account of such clubbing to the Government. Mr. Pranav G. Desai, learned advocate appearing for the petitioner Companies has further submitted that evenif

in future, if need arises for increasing of the authorized capital of the Company, necessary stamp duties will be paid by the Transferee Company. He has, therefore, submitted that at present, the compliance of the provisions of Section 94 & 97 read with Clause 10 of the Companies Act, 1956 is not applicable to the Transferee Company.

8. As far as furnishing of latest financial statements are concerned, the petitioner Companies have submitted along with the affidavit the audited accounts as on 31.03.2007 of RAJIV PETROCHEMICALS PRIVATE LIMITED and PARI PLAST INDUSTRIES PRIVATE LIMITED as well as the unaudited and provisional accounts as on 30.09.2007 of both the Companies. He has, therefore, submitted that both the issues raised by the Registrar of Companies in his affidavit are taken care of by the petitioners.

9. The Official Liquidator has filed his report dated __.10.2007. It is stated therein that M/s. D. V. Buch & Co., Chartered Accountants after scrutiny of the Books of Accounts and affairs of the Company have submitted their investigation report dated 05.10.2007. A copy of the said report is attached along with his report. It is submitted by the Chartered Accountant that on the basis of information and explanations given to them and on the basis of records produced before them and subject to their report, they were of the view that the acts and transactions of the Transferor Company are conducted within the objects mentioned in the Memorandum of

Association of the Company and hence, the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to public interest. They were, therefore, of the opinion that amalgamation of PARI PLAST INDUSTRIES PRIVATE LIMITED with RAJIV PETROCHEMICALS PRIVATE LIMITED is in the best interest of its members, creditors and public at large.

10. In view of this report of the Chartered Accountant, the Official Liquidator has submitted in his report that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest.

11. Having heard Mr. Pranav G. Desai, learned advocate appearing for the petitioner Companies and Mr. Harin Rawal, learned Assistant Solicitor General appearing for the Central Government and after having considered the submissions made before the Court and more particularly, the fact that the Scheme of Amalgamation has been approved by the shareholders and the Creditors and that there has been no objection by the office of the Central Government through the Regional Director and the Official Liquidator, the Scheme of Amalgamation seeking to amalgamate **PARI PLAST INDUSTRIES PRIVATE LIMITED**, the Transferor Company with **RAJIV PETROCHEMICALS PRIVATE LIMITED**, the Transferee Company is hereby sanctioned.

12. So far as the costs to be paid to the learned Assistant Solicitor General is concerned, I quantify the same at Rs.3,500/- per petition. The same may be paid by the Transferee Company directly by drawing cheque in favour of Mr. Harin Rawal, Assistant Solicitor General of India.

13. Both these petitions are accordingly disposed of.

Sd/-
[K. A. PUJ, J.]

Savariya